

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**TEAMSTERS DISTRICT COUNCIL 2,
LOCAL 388-M**

and

Case 31-CB-12671

BENITO ALVAREZ

ORDER¹

The petition to revoke subpoena duces tecum B-578869 filed by Teamsters District Council 2, Local 388-M is denied.² The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoena.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, ___ F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

² Accordingly, we find it unnecessary to resolve the issues regarding the date on which the Petitioner received the subpoena and whether the petition to revoke the subpoena was timely filed.

See generally, *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).³

Dated, Washington, D.C., January 29, 2010.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

³ In addition, the Petitioner's argument that the subpoena should be revoked because the unfair labor practice charge is barred by Sec. 10(b) is without merit. Issues regarding Sec. 10(b) are generally not addressed in an investigative subpoena context. See, e.g., *NLRB v. The Bakersfield Californian*, 128 F.3d 1339, 1341 (9th Cir. 1997) ("Like other defenses to an unfair labor practice complaint, a section 10(b) statute of limitations defense is not properly evaluated in a subpoena enforcement proceeding.") Further, even if the merits of the Petitioner's 10(b) argument were considered, "it is well established that Section 10(b) is tolled until the Charging Party has either actual or constructive notice of the alleged unfair labor practice. The Board has ruled that this 'notice, whether actual or constructive, must be clear and unequivocal, and that the burden of showing such notice is on the party raising the affirmative defense of Section 10(b).'" *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995, 995-996 (1986), quoting *Strick Corp.*, 241 NLRB 210 fn. 1 (1979) (internal citation omitted). Here, the documents requested by the subpoena are relevant to the question of when the Charging Party knew or should have known that his grievance had been withdrawn. Accordingly, the Petitioner has failed to establish that the subpoena should be revoked on this basis.